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SACRAMENTO COURTS
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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 IN AND FOR THE COUNTY OF SACRAMENTO

17 FAIR POLITICAL PRACTICES COMMISSION,)
a state agency,)

18 Plaintiff,)

19 v.)

20 AGUA CALIENTE BAND OF CAHUILLA)
21 INDIANS, and DOES I-XX,)

22 Defendants.)

Case No. 02AS04545

DECLARATION OF ALAN
HERNDON IN OPPOSITION TO
MOTION TO QUASH

Date: December 20, 2002

Time: 2:00p.m.

Dept: 53

Judge: Hon. Loren McMaster

Action filed July 31, 2002

No Trial Date Set

24 I, Alan Herndon declare:

25 1. I am over the age of 18 years. My business address is: Fair Political Practices
26 Commission, 428 J Street, Suite 620, Sacramento, CA 95814. The facts set forth herein are personally
27 known to me, and if called upon to testify, I could and would competently do so. I am submitting this
28

1 declaration in support of the California Fair Political Practices Commission's opposition to the motion
2 to quash filed by the Agua Caliente Band of Cahuilla Indians.

3 2. I am the Chief Investigator for the Enforcement Division of the Fair Political Practices
4 Commission (the "FPPC"), and have been so employed since 1983. I graduated from California State
5 University at Fresno with a degree in Accounting in 1972. In 1972, I went to work for the Franchise
6 Tax Board (the "FTB") as an auditor. In 1975, I began working for the FTB's Political Reform Audit
7 Program. In 1975, I was loaned for five months to the Board of Equalization to conduct campaign
8 audits under the Waxman-Dymally Act (the predecessor to the Political Reform Act). From 1977 to
9 1978, for sixteen months, I was on loan from the Franchise Tax Board to the Technical Assistance
10 Division of the FPPC, working in a consulting capacity and assisting in enforcement matters. From
11 1978 to 1980, I worked as an auditor with the Franchise Tax Board's tax program. In 1980, I returned
12 to the FPPC and worked in the Enforcement Division as an Accounting Specialist until I was promoted
13 to Chief Investigator in 1983.

14 3. The FPPC is statutorily charged with the duty to vigorously enforce the provisions of the
15 Political Reform Act of 1974 (the "Act," Gov. Code § 81000 et seq.). As the Chief Investigator, I am
16 responsible for managing the statewide investigative unit of the Enforcement Division of the FPPC,
17 including the development of policies and procedures. I organize and direct the investigative unit to
18 meet the FPPC's statutory mission of vigorous enforcement of the Act. I supervise seven investigators,
19 two Accounting Specialists, two Political Reform Consultants, and an Associate Governmental
20 Program Analyst. To date, the Enforcement Division has opened files on over one thousand complaints
21 during calendar year 2002. Among my job duties, I oversee the intake and initial evaluation of all
22 complaints regarding violations of the campaign reporting provisions of the Act. At the conclusion of
23 the intake process, I make a recommendation to the Chief of Enforcement as to whether a given case
24 will be referred for full investigation or closed. If a case is referred for full investigation, the case is
25 assigned to an investigator or auditor, and an attorney. I oversee the course of all of the investigations
26 and have regular case review meetings with Enforcement Division personnel to review their progress
27 on assigned cases. I have also provided training to the California District Attorneys' Association on
28 enforcement of the Act.

1 4. In the course of performing my duties as Chief Investigator, I have become thoroughly
2 familiar with the operation of the Act's campaign reporting scheme as it pertains to the ability of the
3 Commission to enforce the campaign reporting provisions of the Act. I have also been integrally
4 involved in the implementation of various amendments to the campaign reporting provisions of the Act
5 that have been passed by the People of the State of California, with the general goal of increasing the
6 level of disclosure of campaign finances at the state and local levels. In a similar vein, the People of
7 the State of California have, on at least two occasions, voted to strengthen the enforcement provisions
8 of the Act to ensure compliance with the Act's campaign reporting provisions. In this regard,
9 Proposition 34, the most recent campaign finance reform measure passed by the People of the State of
10 California in November of 2000, included, among other modifications to the Act, increased financial
11 penalties for violations of the Act, as well as monetary limitations on contributions to state candidates
12 and state political committees.

13 5. Among the long-standing provisions of the Act is a provision that any person who
14 makes contributions of \$10,000 or more to political candidates and/or committees in a calendar year
15 must file periodic campaign statements reflecting that person's contribution activity during the
16 applicable campaign reporting period. Such contributors become "major donor" committees under the
17 Act. The primary manner by which violations of the major donor provisions of the Act are uncovered
18 is through the campaign reporting by recipient committees. If a recipient committee's campaign
19 statement shows receipt of a contribution of \$10,000 or more from a person, and there is no record of
20 that person having filed a major donor campaign statement, there is a strong likelihood that there has
21 been a violation of the Act by the contributor. Conversely, if a major donor campaign statement shows
22 a large contribution to a recipient committee which is not disclosed on the recipient committee's
23 campaign statement, there is a strong likelihood that there has been a violation of the Act by the
24 recipient committee. This ability to cross-check campaign statements is an important investigative tool
25 for enforcing the Act, which, if not available, would result in a significant increase in the number of
26 violations of the Act that go undetected.

27 6. The Act also contains late contribution reporting provisions for the reporting of large
28 contributions made to a candidate or political committee in close time proximity to the date of an

1 election. Because of the potential impact of large “11th hour” contributions on the outcome of an
2 election, the Enforcement Division places a strong emphasis on the enforcement of these provisions of
3 the Act to ensure that late contributions are timely reported *before* the subject election. Under the late
4 contribution campaign reporting provisions of the Act, when a major donor committee makes a
5 contribution of \$1,000 or more to a candidate, a candidate’s controlled committee, or a committee
6 primarily formed to support or oppose a candidate or ballot measure in the last 16 days preceding an
7 election, the contributor must file a late contribution report within 24 hours of making the contribution.
8 Conversely, the recipient candidate or committee must file a late contribution report within 24 hours of
9 receiving the contribution. The ability to cross-check the contributors’ late contribution reports against
10 the recipient committees’ late contribution reports is an important investigative tool in determining
11 whether there has been a violation of the late contribution reporting provisions of the Act by either the
12 contributor or the recipient of a contribution. Late contribution reporting violations may also be
13 uncovered in the post-election campaign statements of the contributor and/or the recipient committee.
14 Again, the ability to cross-check the contributor’s campaign statement against the recipient committee’s
15 campaign statement is an important investigative tool in determining whether there has been a violation
16 of the late contribution reporting provisions of the Act. If this tool were not available, it would result in
17 a significant increase in the number of violations of the Act that go undetected.

18 7. Full and truthful disclosure of campaign finance information so that voters may be fully
19 informed is one of the primary goals of the Act. Toward this end, the Act now requires that persons
20 making campaign contributions, receiving campaign contributions, or making campaign expenditures
21 of \$50,000 or more in a calendar year in connection with a state elective office or state ballot measure,
22 file campaign statements electronically with the Secretary of State which are immediately posted for
23 public review on the Secretary of State’s website. In fact, one of the violations of the Act charged
24 against Defendant Agua Caliente Band was initiated based upon a review of electronic campaign
25 statements filed by the Yes on Proposition 51 committee, which revealed a \$125,000 contribution to
26 that committee that was not reported by Defendant. If Defendant Agua Caliente Band of Cahuilla
27 Indians does not have to comply with the Act, the use of electronic filings as an enforcement tool and a
28 public disclosure mechanism will be nullified.

1 8. Another method of enforcing the Act is the auditing of the campaign statements and
2 financial records of a committee. If Defendant Agua Caliente Band of Cahuilla Indians does not have
3 to comply with the Act, it will not be required to maintain campaign financial records, nor will its
4 campaign statements and financial records be subject to review during an audit or investigation to
5 determine whether it has engaged in unlawful campaign practices alone or in concert with non-tribal
6 entities or persons.

7 9. The advent of contribution limits under Proposition 34 represents a very significant
8 change in the campaign finance system. If Defendant Agua Caliente Band of Cahuilla Indians, as a
9 major contributor and/or a recipient committee, does not have to comply with the Act, it will provide a
10 potential vehicle for circumvention of the contribution limits, and the laundering of contributions from
11 non-tribal sources, because there will be no requirement of accurate and truthful disclosure of such non-
12 tribal sources of contributions.

13 10. Attached hereto and incorporated herein by reference as Exhibit A is a true and complete
14 copy of a chart that I have prepared to illustrate the impact on various disclosure provisions of the Act,
15 if one party to various transactions is not subject to the provisions of the Act. As discussed above, this
16 chart illustrates that in numerous reporting situations there would only be single-sided reporting,
17 leaving the disclosure scheme dependent on the honesty and accuracy of a single party. Moreover, with
18 regard to independent expenditures, which are already a major form of campaign activity and are
19 expected to increase greatly with the advent of contribution limits, if the party making the expenditure
20 is not subject to the Act, there will be no reporting whatsoever.

21 11. In the course of my oversight of the full scope of investigative activity in the
22 Enforcement Division, and my other duties as the Chief Investigator, I am well aware that federally
23 recognized Indian tribes involved in gaming operations in the State of California have become “major
24 players” in California politics. In the last five years, Defendant Agua Caliente Band of Cahuilla
25 Indians has contributed well over ten million dollars (\$10,000,000) to statewide propositions, political
26 parties, and state and local candidates. There are several other federally recognized Indian tribes in the
27 state that have contributed even more money to statewide propositions, political parties, and state and
28 local candidates. If Defendant Agua Caliente Band, and by inference all other federally recognized

1 Indian tribes, are not required to comply with the Act, the ability of the Enforcement Division to
2 enforce the Act will be severely undermined, not only as to the tribes, but as to any and all recipients of
3 contributions from them, and contributors to them. As recipients of tribal contributions include state
4 elected officials, political parties, and numerous statewide ballot measure committees, the entire
5 campaign reporting scheme enacted by the People of the State of California will be jeopardized.

6 I declare under penalty of perjury under the laws of the State of California, that the foregoing is
7 true and correct. Executed on December 9, 2002 at Sacramento, California.

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10 Alan Herndon, Chief Investigator
11 Fair Political Practices Commission
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